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**NO. 82-1164**

**SUPREME COURT OF THE UNITED STATES**

**OCTOBER TERM, 1982**

**JOHNNY J. DOTSON and  
DANIEL F. BLOCH**

**Petitioners**

**v.**

**MOUNTAIN MISSION SCHOOL, INC., ET AL**

**Respondents**

**ON WRIT OF CERTIORARI TO THE  
UNITED STATES SUPREME COURT  
FROM THE UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT**

**BRIEF IN OPPOSITION  
TO  
PETITION FOR WRIT OF CERTIORARI**

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## **STATEMENT OF THE CASE**

**This Brief in Opposition to petitioners' Petition for Writ of Certiorari is being filed on behalf of the Mountain Mission School, its sixteen defendant officers, directors and employees, Keary Bob Williams and Willard Osborne, all of whom were included by the U.S. Fourth Circuit Court of Appeals in the group referred to as the "Virginia Defendants". (Petition for Cert. at 10).**

**The Fourth Circuit Court of Appeals affirmed the District Court's dismissal of all of petitioner Johnny J. Dotson's claims against Mountain Mission School, its sixteen defendant officers, directors, employees, Williams and Osborne. (Petition for Cert. at 29.) Since Mr. Dotson's claims were dismissed in the Fourth Circuit as to all parties on whose behalf this Brief is being filed, only those claims for which Mr. Bloch has standing should be considered.**

**The case has been appealed on summary rulings and no evidence has been presented. The Fourth Circuit has remanded the case to the District Court level for further consideration of the merits, and this case is now proceeding in the U.S. District Court for the Western District of Virginia through the normal discovery process in anticipation of a trial on the merits.**

**Mr. Bloch, who is the only petitioner still involved in this proceeding as against the Mountain Mission School and other defendants in this Brief, has never been a student, resident or employee of the Mountain Mission School and there is no indication in the record that he is the father of any children who have resided at Mountain Mission School, or has any connection with any other licensed child care facility in the Commonwealth of Virginia. The only connection between Mr. Bloch and Mountain Mission School indicated by the record thus far is that Mr. Bloch was charged with abduction of two children from Mountain Mission School and later tried in a Virginia Circuit Court in the Western District of Virginia, and on May 27, 1975, after plea bargaining, pleaded guilty to the felony of**

abduction. Mr. Bloch has filed his Petition for a Writ of Habeas Corpus in other proceedings, with which this Court is not herein concerned. Petitioners' *Statment of the Case* sets forth no allegations of injury to Mr. Bloch. Nevertheless, Mr. Bloch continues to complain that Virginia Code Section 63.1-218 (1980) is unconstitutional.

The Fourth Circuit Court in its Opinion in this proceeding stated as dictum that the petitioners had not included the proper parties to contest the constitutionality of the aforesaid statute but went on to rule that the statute was constitutional. (Petition for Cert. at 17.) Petitioners, in their second question presented for review, imply that, based on the provisions of Virginia Code Section 63.1-218, the Commonwealth of Virginia exempts the Mountain Mission School from state regulations designed to protect, benefit and harbour state orphans. (Petition for Cert. at 1.) Virginia Code Section 63.1-218 provides, in essence, that only the provisions of Chapter 10 of Title 63 of the 1950 Code of Virginia will not apply to any private school or charitable institution incorporated under the laws of the State of Virginia and located West of the Sandy Ridge and on the watersheds of the Big Sandy River and to which no contributions are made by the State of Virginia or any agency thereof. (Appendix, p. 10.) Chapter 10 is only the State's licensing law and does not contain Virginia's statutes as to the investigation of child abuse and neglect. The Virginia statutory scheme concerning the reporting of and the investigation of child abuse and neglect is contained in Chapter 12.1 of Title 63 of the 1950 Code of Virginia, as amended. The policy of Virginia as set forth in Chapter 12.1 in the first section of said chapter, Section 63.1-248.1, is to assure "... that protective services will be made available to an abused or neglected child in order to protect such a child . . and to prevent further abuse or neglect, . . .". (Va. Code Section 63.1-248.1.) Chapter 12.1 is applicable to the Mountain Mission School as it is to all other institutions, homes and other entities in the Commonwealth of Virginia.

It is important to note that the provisions of Chapter



12.1, also require that the State Department of Welfare through its local department shall make an immediate investigation upon receipt of a report or complaint of child abuse or neglect. (See Va. Code Section 63.1-248.6(D)(1.), Appendix, page 11). This chapter also authorizes any person required to make a report or investigation pursuant to a complaint of child abuse or neglect to talk to the child suspected of being abused or neglected. (Va. Code Section 63.1-248.10, Appendix, page 13). Therefore, the law of Virginia does require all institutions, homes and other entities, including the Mountain Mission School, to be opened to inspection by the State Department of Welfare if there is a report of abuse or neglect to a child.

## SUMMARY

The essence of petitioners' argument is that the employees and staff of Mountain Mission School are guilty of child abuse and neglect of its students; that this abuse and neglect cannot be investigated because Va. Code Section 63.1-218 excludes the geographical area in which Mountain Mission School is located from the licensing requirements of Chapter 10 of Title 63 of the 1950 Code of Virginia (as amended); and, consequently, that the students of Mountain Mission School are not receiving equal protection of the law because the State authorities cannot legally investigate the alleged abuse and neglect. Petitioners have completely misconstrued and misrepresented the import of the section under attack. As pointed out in the *Statement of the Case*, the aforesaid Section applies only to Chapter 10, which is purely a licensing section. The Commonwealth of Virginia has a very effective and comprehensive statutory scheme for the reporting and investigation of child abuse and neglect as set forth in Chapter 12.1 of Title 63 of the Code of Virginia. Therefore, petitioners' allegations that the statutes of Virginia preclude State authorities from legally investigating alleged child abuse and neglect at

Mountain Mission School are simply not true.

Appellees submit that this proceeding is not one in which a Writ of Certiorari should be granted. The matter is here merely on a summary judgement. If this Court were to grant a Writ of Certiorari at this time, the proceeding would be without the benefit of a record of any evidence and would, in fact, be prior to the trial of this matter on the merits. As noted *supra*, Mr. Dotson has been dropped as a party against the Mountain Mission School and other defendants included in this Brief; and Mr. Bloch is without standing to bring this action even if there were merit to the allegations. Furthermore, the petitioners have not even joined the proper parties adversary to attack the constitutionality of the alleged section; as pointed out by the Fourth Circuit Court of Appeals, the petitioners should have included the proper State officials in any desired attack on a State licensing statute. (Petition for Cert. at 16.)

The Mountain Mission School vehemently denies that there is now, or has ever been, abuse or neglect of its students, and submits that Mr. Bloch's action arises due to his desire for vengeance.

## **ARGUMENT**

### **I. PETITIONERS HAVE NOT SHOWN THE EXISTENCE OF A FEDERAL QUESTION.**

Petitioners contend that Federal questions were raised in the Fourth Circuit Court of Appeals when it quoted decisions and authorities of the Supreme Court of the United States on constitutional law. (Petition for Cert. at 7.) Decisions of the Supreme Court of the United States are cited many times by courts of Federal and State jurisdiction, but such cites do not in any way confirm that any issues involved in such proceeding are Federal questions giving rise to Federal jurisdiction.

As to Question No. 2 presented by petitioners, the existence of a federal question has not been adequately shown in the appropriate section of the Petition for Certiorari.

### **II. THE PETITION FOR WRIT OF CERTIORARI DOES NOT COMPLY WITH THE RULES OF THE SUPREME COURT OF THE UNITED STATES.**

Supreme Court Rule 21.2 provides that the Clerk shall not accept any Petition for Writ of Certiorari that does not comply with Rules 21 and 33. Petitioners' Writ of Certiorari does not comply with Rules 21 and 33 in the following respects:

(A) Supreme Court Rule 21.1 (b) requires in part that the petitioners supply to this Court "A list of all parties to the proceeding in the court whose judgement is sought to be reviewed, . . .". Petitioners have not compiled with said Rule.

(B) Supreme Court Rule 21.1(f) requires petitioners to cite all constitutional provisions, treaties, statutes, etc., which the case involves. Although petitioners have not separately cited and set out verbatim Virginia Code Section



63.1-218, petitioners have included a portion of the U.S. Court of Appeals Opinion including said clause. However, the stated section taken alone does not provide much information to this Court. The section refers only to the other provisions of the chapter in which it is contained, and the other applicable provisions are not set out verbatim nor are they even cited for this Court to consider. Therefore, petitioners are not in compliance with Rule 21.1(f).

### III. MR. BLOCH HAS NO STANDING TO CONTEST THE STATE STATUTE.

The 1950 Code of Virginia, Section 63.1-218 exempts a certain geographical area from licensing requirements. Mr. Bloch has no interest in any institution subject to the licensing requirements or exempted from said licensing requirements either as an employee, director, resident, student, or otherwise. Furthermore, as set out in petitioners' own Complaint, Mr. Bloch is not even a resident of the State of Virginia. The only connection of Mr. Bloch to Mountain Mission School indicated in the lower court's proceedings was his conviction for abducting children from Mountain Mission School. Although Mr. Bloch has filed or assisted in filing numerous suits to attack Mountain Mission School and other entities in various State and Federal Courts since his plea of guilty and conviction in 1975 for felonious child abduction, it is difficult to see how Mr. Bloch's interests have ever been affected by Mountain Mission School, unless Mr. Bloch's interests could be considered to be affected as a result of Mountain Mission School's notification to the authorities of the abduction of two male students by Mr. Bloch. Mr. Bloch's interests were subsequently affected because, based on the two students' statements, he was arrested and placed in jail on two counts of felonious abduction. This incarceration resulted from the investigation by Federal and State authorities upon Mountain Mission School's notification. Additional facts concerning this incident were presented to this Court in Docket

No. 82-604 which involved Mr. Bloch's Petition for a Writ of Certiorari arising out of his suit against Mountaineer Publishing Company, Inc., et al, because of the said paper's coverage of his trial. (Cert. denied, *Bloch v. Compton, et al*, No. 82-604, Nov. 29, 1982.) It is submitted that this is the only connection Mr. Bloch has had with Mountain Mission School or any other child care facility in the State of Virginia, but this connection should not provide Mr. Bloch with standing to attack the constitutionality of the licensing statutes in the State of Virginia.

In his Complaint filed in the United States District Court for the Western District of Virginia, Mr. Bloch intimates that he has attempted to expose the truths about Mountain Mission School, and that numerous agencies and individuals have been involved in this continuing saga including the Governor of Virginia, the FBI, the ACLU, various reporters, and the Ohio Welfare Department. It is interesting to note that of all of these agencies, including the FBI, only Mr. Bloch, who suffered a felony conviction at the instance of Mountain Mission School, has taken affirmative action and has sued Mountain Mission School for \$100,000,000 in this proceeding.

#### **IV. THE STATUTE COMPLAINED OF IS A LICENSING STATUTE.**

Mr. Bloch attacks Va. Code Section 63.1-218, alleging that it prevents investigation by Virginia authorities of alleged child abuse and neglect at Mountain Mission School. The cited statute excludes a certain geographical area in the State of Virginia from Chapter 10 of Title 63 of the 1950 Code of Virginia (as amended), which concerns the licensing of child care facilities but does not exclude such area from the coverage of the Virginia child abuse and neglect statutes. The Virginia child abuse and neglect statutes are not found in Chapter 10, but are to be found in Chapter 12.1 of Title 63 of the 1950 Code of Virginia, Section 63.1-248.1, et. seq. The aforesaid Chapter 12.1 sets forth the policy of Vir-

ginia embodied in Chapter 12.1, which is to identify children who are being abused or neglected, protect such children and prevent further abuse or neglect. (See Va. Code Section 63.1-248.1, Appendix, p. 10.) Virginia child abuse and neglect regulations do apply to Mountain Mission School as well as every other entity in Virginia. If there is any child abuse or neglect at Mountain Mission School, it is subject to investigation and regulation by the Commonwealth of Virginia since Virginia Code Section 63.1-218 has nothing to do with Chapter 12, the Virginia statutory scheme for investigation of child abuse and neglect. (See Appendix, p. 10) for a more complete description of some of the statutory safeguards provided.) Virginia does provide equal protection to all children who may be abused or neglected, and there are no exceptions. Mr. Bloch's contention that Virginia law prevents inspection and investigation of complaints of child abuse and neglect at Mountain Mission School is without basis.

#### **V. NO STATE OFFICIALS ARE DEFENDANTS IN THIS SUIT WHICH ATTACKS THE CONSTITUTIONALITY OF A STATE STATUTE.**

As pointed out by the United States Fourth Circuit Court of Appeals in its Opinion in this case, petitioners should have included the State officials who enacted this legislation. The proper proceeding for attacking the constitutionality of a State statute is to include the State authorities so they can be heard and present any evidence which may enlighten this Court as to the rationale and effect of such statute. (Petition for Cert. at 16-17.)

#### **VI. CONSIDERATIONS GOVERNING REVIEW OF CERTIORARI.**

It is submitted that there are no good reasons indicating that this proceeding should be reviewed.

(A) The United States Fourth Circuit Court of

Appeals has rendered no decision in this proceeding which conflicts with the decision of any other Federal or State court of last resort on these matters; rather, the Fourth Circuit Court of Appeals has attempted to follow the firmly established majority on each point considered. Furthermore, the United States Fourth Circuit Court of Appeals in its decision in this matter has not departed from the accepted and usual course of judicial proceedings nor has it sanctioned such departure by the District Court which originally ruled in this matter.

(B) No decision by a state court of last resort is being challenged here. Although petitioner Dotson did not advise the Court, he has brought a similar challenge in the Supreme Court of Virginia and has been denied relief there. The defendants are not advised whether Mr. Dotson has attempted to appeal the aforesaid State Court decision.

(C) This issue is not an important question of Federal law, and Virginia has a sufficient statutory scheme to protect its citizens from the ills and dangers specified by Mr. Bloch. It is submitted that the attempt by Mr. Bloch to attack the specified statute is obviously a further attempt to vent his vengeance against the institution which he blames for his felony conviction and not a good faith attempt to correct any wrong. Furthermore, the decision rendered in this proceeding by the Fourth Circuit Court of Appeals in no way conflicts with any applicable decisions of this Court nor has said Circuit Court espoused any new theory of law or raised any new or novel issues.

Wherefore, for the foregoing reasons, the defendants herein represented move this Court to deny the petitioners' Petition for Writ of Certiorari.

## APPENDIX

**Va. Code § 63.1-218. Chapter not to apply to certain schools and institutions.** — None of the provisions of this chapter shall apply to any private school or charitable institution incorporated under the laws of this State, which is located west of Sandy Ridge and on the watersheds of Big Sandy river, and to which no contributions are made by the State or any agency thereof. (Code 1950, §63-255; 1968, c. 578.)

**Va. Code § 63.1-248.1. Policy of the State.** — The General Assembly declares that it is the policy of this Commonwealth to require reports of suspected child abuse and neglect for the purpose of identifying children who are being abused or neglected, of assuring that protective services will be made available to an abused or neglected child in order to protect such a child and his siblings and to prevent further abuse or neglect, and of preserving the family life of the parents and children, where possible, by enhancing parental capacity for adequate child care. (1975, c. 341.)

**Va. Code § 63.1-248.4. Complaints by others of certain injuries to children.** — Any person who suspects that a child is an abused or neglected child may make a complaint concerning such child, except as hereinafter provided, to the local department of the county or city wherein the child resides or wherein the abuse or neglect is believed to have occurred. If an employee of the local department is suspected of abusing or neglecting a child, the complaint shall be made to the juvenile and domestic relations district court of the county or city where the abuse or neglect was discovered. Such a complaint may be oral or in writing and shall disclose all information which is the basis for the suspicion of abuse or neglect of the child. (1975, c. 341; 1976, c. 348.)



**Va. Code § 63.1-248.6. Local departments to establish child-protective services; duties. — A.** Each local department shall establish child-protective services under a departmental coordinator within such department or with one or more adjacent local departments which shall be staffed with qualified personnel pursuant to regulations promulgated by the State Board of Welfare. The local department shall be the public agency responsible for receiving and investigating complaints and reports, except that (i) in cases where the reports or complaints are to be made to the juvenile and domestic relations district court, the court shall be responsible for the investigation and (ii) in cases where an employee at a private or state-operated hospital, institution or other facility is suspected of abusing or neglecting a child in such hospital, institution or other facility, the local department may request the Department to assist in conducting the investigation in accordance with rules and regulations approved by the State Board.

**B.** The local department shall insure, through its own personnel or through cooperative arrangements with other local agencies, the capability of receiving reports or complaints and responding to them promptly on a twenty-four hours a day, seven days per week basis.

**C.** The local department shall widely publicize a telephone number for receiving complaints and reports.

**D.** The local department shall upon receipt of a report or complaint:

- 1.** Make immediate investigation;
- 2.** When investigation of a complaint reveals cause to suspect abuse or neglect, complete a report and transmit it forthwith to the central registry;
- 3.** When abuse or neglect is found, arrange for necessary protective and rehabilitative services to be provided to the child and his family;
- 4.** If removal of the child or his siblings from his home is deemed necessary, petition the court for such removal;
- 5.** When abuse or neglect is suspected in any cases involving death of a child or injury to the child in which a

felony is also suspected for which the penalty prescribed by law is not less than five years imprisonment or where there is sexual abuse or suspected sexual abuse of a child involving the use or display of the child in sexually explicit visual material, as defined in § 18.2-374.1, report immediately to the Commonwealth's attorney and make available to the Commonwealth's attorney the records of the local department upon which such report is founded;

6. Send a follow-up report based on the investigation to the central registry within fourteen days and at subsequent intervals to be determined by department regulations;

7. Determine within forty-five days if a report of abuse or neglect is founded or unfounded and transmit a report to such effect to the central registry;

8. If a report of abuse or neglect is unfounded, transmit a report to such effect to the complainant and parent or guardian and the person responsible for the care of the child in those cases where such person was suspected of abuse or neglect.

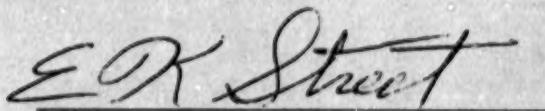
E. The local department shall foster, when practicable, the creation, maintenance and coordination of hospital and community-based multi-discipline teams which shall include where possible, but not be limited to, members of the medical, mental health, social work, nursing, education, legal and law-enforcement professions. Such teams shall assist the local departments in identifying abused and neglected children, coordinating medical, social, and legal services for the children and their families, helping to develop innovative programs for detection and prevention of child abuse, promoting community concern and action in the area of child abuse and neglect, and disseminating information to the general public with respect to the problem of child abuse and neglect and the facilities and prevention and treatment methods available to combat child abuse and neglect. The local department shall also coordinate its efforts in the provision of these services for abused and neglected children with the judge and staff of the court.

**F. The local department shall report annually on its activities concerning abused and neglected children to the court and to the Child-Protective Services Unit in the Department on forms provided by the Department. (1975, c. 341; 1978, c. 747; 1979, cc. 347, 348.)**

**Va. Code § 63.1-248.10. Authority to talk to child or sibling. — Any person required to make a report or investigation pursuant to this chapter may talk to any child suspected of being abused or neglected or to any of his siblings without consent of his parent or guardian. (1975, c. 341; 1979, c. 453.)**

## **CERTIFICATE OF SERVICE**

I hereby certify that six copies of the foregoing Brief in Opposition to Petitioners' Petition for a Writ of Certiorari were mailed to Larry Helm Spalding, Esq., 6624 Gateway Avenue, Sarasota, Fla., 33581, counsel for Petitioners' on this the 11th day of February, 1983.

A handwritten signature in cursive script, reading "E.K. Street", written in dark ink over a horizontal line.

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